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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,744	08/28/2001	Christopher Carl Wulforst	5308	5156

7590 10/14/2003

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EXAMINER

OLSZEWSKI, JOAN M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/940,744	WULFORST ET AL.	
	Examiner	Art Unit	
	Joan M. Olszewski	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: |

FINAL REJECTION

This is in response to Applicant's response filed September 22, 2003. Currently, claims 1-14 are pending in this application.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 6-11 and 14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,2,17,19,20 and 23-25 of copending Application No. 10/207519 in view of Denesuk et al. The device as set forth in the above identified claims of copending application 10/207519 sets forth all of the features claimed except for the cushioning core being removable from the outer encasing. Denesuk et al. show a removable outer encasing (12) having an inner filling (14).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device as represented by claims 1,2,17,19,20 and 23-25 of the copending application 10/207519 by utilizing a removable

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outer encasing with an inner filling inside as taught by Denesuk et al. in order to provide an opportunity to launder the outer encasing and if need be replace the inner cushioning filler or core.

This is a provisional obviousness-type double patenting rejection.

Claim 5 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,2,17,19,20 and 23-25 of copending Application No. 10/207519 in view of Denesuk et al. and further in view of Ryan et al. (U.S. Patent 5,019,062). The device as set forth by copending application 10/207519 in claims 1,2,17,19,20 and 23-25 as modified in the rejection above teaches everything except for the activated charcoal having about a 100 x 150 particle screened size and distributed on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard. However, Ryan et al. disclose in a similar field of endeavor of odor control agents, a material with an odor layer of activated charcoal which has a particle size of 2-4 microns (Column 3, lines 48-52) and is applied at about 3 mg per sq. cm which is about 1 ounce per sq. yard (column 4, lines 19-31) and is considered to meet the range of "about 1.5 ounces per square yard to about 3 ounces per square yard".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device as represented by claims 1,2,17,19,20 and 23-25 of copending Application No. 10/207519 as modified by Denesuk et al. in the rejection above to include a micron particle size activated charcoal

distributed at the claimed rate of about 1.5 ounces per square yard to about 3 ounces per square yard as taught by Ryan et al. for the purposes of providing the optimum size and distribution of the odor agents to adsorb odor.

Further, although Ryan et al. do not specifically disclose a 100 x 150 particle screened size, a small particulate composition is disclosed and it would have been obvious to change the particle size in order to achieve an optimum particle size and range for adsorbing the odor.

This is a provisional obviousness-type double patenting rejection.

Claims 12 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,2,17,19,20 and 23-25 of copending Application No. 10/207519 in view of Denesuk et al. and Sesselmann (U.S. Patent 5,539,930). The combination of the identified claims of Applicant's copending application and Denesuk et al. shows all of the features claimed except for the backing material being formed as a film. However, Sesselmann shows a backing material (32) being formed as a film (column 4, line 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of the identified claims of Applicant's copending application and Denesuk et al. to include a backing material being formed as a film as taught by Sesselmann in order to provide uniform coverage and strength to the material and a waterproofing to protect the inner cushion.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sesselmann (U.S. Patent 5,539,930) in view of Denesuk et al. (U.S. Patent 6,196,156).

Regarding Claims 1-4,6 and 9-14 Sesselmann discloses a removable encasing (Figure 8) having a top surface and a bottom surface, a face textile (30) with an exterior surface and an interior surface, and an odor receiving layer (34) permanently disposed on the interior surface of the face textile in a configuration that covers at least the entire top surface (Figure 1); wherein the odor receiving layer has an adsorbing or absorbing agent of activated charcoal (column 5, line 1-9) and this layer of material is held in place by an adhesive (column 5, lines 3-9); a needled nonwoven material of low density polyester (column 4, line 52) backing material (32) disposed adjacent to the odor adsorbing layer (Figure 2) and the backing material comprising a film (column 4, line 40). Sesselmann does not specifically show an animal bed with a cushioning core. However, Denesuk et al. teach an animal bed formed of a removable outer casing (10) with an inner filling (14).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Sesselmann device by using the

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fabric to removably cover an inner cushion as taught by Denesuk et al. since both devices deal with fabrics for reducing odor and this would only require substituting one well known material for another.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sesselmann as modified by Denesuk et al. as applied to claims 1-4 above, and further in view of Ryan et al. (U.S. Patent 5,019,062).

Re- Claim 5, the combination of Sesselmann as modified by Denesuk et al. discloses all the claimed features as discussed in the rejections above except for the activated charcoal having about a 100 x 150 particle screened size and distributed on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard. However, Ryan et al. disclose in a similar field of endeavor of odor control agents, a material with an odor layer of activated charcoal which has a particle size of 2-4 microns (Column 3, lines 48-52) and is applied at about 3 mg per sq. cm which is about 1 ounce per sq. yard (column 4, lines 19-31) and is considered to meet the range of "about 1.5 ounces per square yard to about 3 ounces per square yard".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination device of Sesselmann and Denesuk et al. to include a micron particle size activated charcoal distributed at the claimed rate of about 1.5 ounces per square yard to about 3 ounces per square yard for

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the purposes of providing the optimum size and distribution of the odor agents to adsorb odor.

Although Ryan et al. do not specifically disclose a 100 x 150 particle screened size, a small particulate composition is disclosed and it would have been obvious to change the particle size in order to achieve an optimum particle size and range for adsorbing the odor.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Sesselmann as modified by Denesuk et al. as applied to claims 1-4 above, and further in view of Giglia (U.S. Patent 4, 459,332).

Re- Claims 7 and 8, the combination of Sesselmann as modified by Denesuk et al. discloses all the claimed features as discussed in the rejections above including an adhesive for bonding the activated charcoal against the interior surface of the textile (column 5, lines 3-9)(Sesselmann). However, the combination of Sesselmann as modified by Denesuk et al. is silent about the specific adhesive being a hot melt adhesive. However, Giglia teaches the use of a hot melt adhesive (column 3, lines 1-6) for adhering materials together.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of Sesselmann as modified by Denesuk et al. by utilizing the hot melt adhesive as taught by Giglia in order to secure the activated charcoal to the interior surface of the textile for odor protection.

Response to Arguments

Applicant's arguments filed September 22, 2003 have been fully considered but they are not persuasive.

With respect to the double patenting rejection, Applicant has agreed to file a terminal disclaimer once all other issues of patentability have been resolved. As such the double patenting rejections have been repeated above and no further explanation is deemed necessary.

With respect to the 35 USC 103 rejection of Sesselmann in view of Denesuk et al., Applicant argues that this combination is improper since Sesselmann is directed to non-analogous art and there is no teaching, suggestion or motivation to combine Sesselmann with Denesuk et al. However, it is the Examiner's position that both Sesselmann and Denesuk et al. are related to textile structures and clearly one looking for a material which would block odor transmission would not only look to animal bedding but would look to other areas of fabric such as jackets, tenting materials or other similar areas where odor transmission would be an issue.

As to the motivation the Examiner has provided this in the combination above, basically that the combining of the teachings would only require the substituting of one odor reducing material for another.

Further, since Applicant cited the Sesselmann reference as being relevant prior art it appears that Applicant also recognizes the similarities to the present invention.

With respect to the rejection of claim 5, Applicant argues that the addition of the Ryan et al. reference is improper since it too is directed to non-analogous art.

Specifically, the Ryan et al. device is directed to the area of odor control as are the Sesselmann and Denesuk et al. devices and further the Ryan et al. reference was relied on only to teach a particle size and a dispersion rate of activated charcoal which would provide the desired odor reduction.

Finally, Applicant argues that the use of the Giglia device in combination with Sesselmann and Denesuk et al. is improper since Giglia does not specifically teach the use of a hot melt adhesive to secure an odor absorbing layer in a bedding material. However, the Giglia device was only relied on to teach the use of a specific type of adhesive, namely a hot melt adhesive and as such would only require the substitution of one known type of adhesive for another.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Joan M. Olszewski
Examiner
Art Unit 3643

JMO



FEDERAL BUREAU OF INVESTIGATION
SUPERVISOR
TECHNICAL SERVICES DIVISION

10/9/03